

BEFORE THE
TENNESSEE STATE BOARD OF EQUALIZATION

<i>In Re:</i>	Global Education Center)	
	Map 091-15-0, Parcels 151 and 152)	Davidson County
	<i>Claim of Exemption</i>)	

INITIAL DECISION AND ORDER

Statement of the Case

This is an appeal from a partial denial of an application for exemption of the subject property from ad valorem taxation. The application was filed with the State Board of Equalization (the "State Board") on May 19, 2006. By letter dated November 21, 2006, State Board staff attorney Mark Aaron notified the applicant of the partial approval and partial denial on the following grounds:

To the extent affiliate artist and visiting artists occupy and use the property, however, the property is taxable, as it is neither occupied nor used by an exemptible institution "purely and exclusively" for exempt purposes of the institution, as required by Tennessee Code Annotated § 67-5-212(a)(1). The agreements with the affiliate and visiting artists appear to be more representative of lease or rental arrangements. This distinction effects the determination regarding the Dance Studio, Office and Recording Studio.

Global Education Center ("GEC"), the applicant, timely appealed the staff attorney's initial determination to the State Board on January 5, 2007, pursuant to Tenn. Code Ann. § 67-5-212(b)(2). The undersigned administrative judge conducted a hearing of this matter on April 24, 2007 in Nashville, Tennessee. Ms. Ellen Gilbert, Director, represented Global Education Center ("GEC"). Metropolitan Attorney Metropolitan Attorney Margaret O. Darby appeared on the Assessor's behalf; also in attendance was John Cantrell, Exemption Administrator, Davidson County Assessor's Office and Mark Aaron, Staff Attorney for the State Board of Equalization.

Findings of Fact and Conclusions of Law

The "GEC" began in 1997 and is housed in historic Richland Hall at 4822 Charlotte Ave and in the adjacent building at 4820 Charlotte Avenue. It is a non-profit organization exempt from federal income tax under § 501(c)(3) of the Internal Revenue Code. Physically, 4822 has a three (3) story building in front, facing Charlotte Avenue, with each floor having 1612 square feet according to the late filed exhibit of the County, the back of that structure has a one story building with 2184 square feet, giving Parcel 151.00, a total of 7020 square feet; 4820 (Parcel 152.00) is a one story building which houses a large arts auditorium/theater /rehearsal hall (for visual reference refer to Exhibit #1 and the photographs attached to the original application).

Ms. Gilbert testified that after receiving the letter granting the partial exemption she felt that further explanation was necessary, it appears that the 'classification' of the various artist was of concern

to the Board designee, Mr. Aaron. Ms. Gilbert stated that the only basic distinction between the different types of artist associated with the “GEC” is their ability to accept independent or separate employment outside of the confines of the “GEC’s” activities. For example, if she got a request to put on ‘show’ or demonstration at a function that would serve alcohol she would not allow her ‘students’/participant’s to perform, but she would suggest that they use an affiliate artist, no funds come back to the organization because of this referral. If a ‘resident’ artist was contacted by an individual or agency to perform at a function they would inform the person that they must get permission from Ms. Gilbert before accepting the engagement, if they accept the engagement again no funds flow back to the organization. Ms. Gilbert explained that the distinction was the ability of that particular artist to accept outside employment but that their relationship to “GEC” was not affected. Therefore their “close associations with the organization and their presence appears to be directly incidental to the accomplishment of the organization’s purposes”¹.

Ms. Gilbert further explained that the only time that an “outside”/visiting artist use the ‘Dance Studio’ not associated with “GEC” is when, for example, Dr. Ming Wang uses the rehearsal hall (Parcel 252.00) once a month for ball room dance instructions to local residents of Chinese heritage. That the participants “pay” by putting in a donation in a fish bowl, which is then given to the “GEC” Ms. Gilbert explained that the cultural fetters of that particular group make this type of arrangement necessary. These activities occur less than 10% of the time. The other uses would be when “outside”/visiting artist use the dance studio or rehearsal hall (depending on the size of the group that is being instructed) to instruct “GEC” students on a particular dance style in anticipation of a demonstration at a local school or they would bring their students to also rehearse.² With respect to the issue of the ‘Recording Studio’ Ms. Gilbert’s explanation as to the current use is directed to the type of recordings. Recordings which are made and used solely for instructional and/or promotional purposes rather than commercial or profit show that that portion of Parcel 251 should also be changed from the original determination; it also then follows that the ‘Offices’ percentage of exemption would change. The appellant does not contest the designations of the ‘Library’ or ‘Gift Shop’.

Article II, section 28 of the Tennessee Constitution permits the legislature to **exempt** from taxation property which is “held and used for purposes purely religious, charitable, scientific, literary, or educational.” Under this authority, the General Assembly has decreed that:

There shall be exempt from property taxation the real and personal property, or any part thereof, owned by any **religious**, charitable, scientific, or nonprofit educational institution which is occupied and used by such institution or its officers purely and exclusively for carrying out thereupon one (1) or more of the purposes for which the institution was created or exists... ; provided..., that no property shall be totally exempted, nor shall any portion thereof be pro rata exempted, unless such property or portion thereof is **actually** used purely and exclusively

¹Analysis of the Board Designee, Attorney Mark Aaron, in finding that the exemptible use of the property.

²Ms. Gilbert explained the use by means of explaining Step Afrika! Dance troupe and Grupo Siquisiri of Veracruz, Mexico.

for religious, **charitable**, scientific or educational purposes. [Emphasis added.]Tenn. Code Annotated § 67-5-212(a) (1) (A).

In this state, property tax exemptions are liberally construed in favor of religious, charitable, and educational institutions. *See, e.g., Christian Home for the Aged, Inc. v. Assessment Appeals Commission*, 790 S.W.2d 288, 291 (Tenn. Ct. App. 1990). Nonetheless, as the party seeking to change the initial determination on its application for exemption, the “GEC” has the burden of proof in this administrative proceeding. State Board Rule 0600-1-.11(2).

In an analysis of the application, Designee’s ruling, accompanying explanation in the appeal application and the testimony of the parties at the hearing it appears to the administrative judge that the appellant, “GEC”, has met the burden to change the initial determination.

The distinctions cited by the Designee appear to have been explained sufficiently to the satisfaction of the administrative judge that under TCA § 67-5-223 (a), in pertinent part:

Subject to the application requirements of § 67-5-212, property owned by nonprofit community and performing arts organizations and used by them or other nonprofit community and performing arts organizations is eligible for property tax exemption as a charitable or educational use of property upon compliance with the provisions of this section. Real property owned by such organizations is eligible for exemption to the extent that it is used by nonprofit community and performing arts organizations for public museums, art galleries, performing arts auditoriums and theaters, and any uses necessary and incidental to the foregoing. . . .

Order

It is, therefore, ORDERED that staff attorney’s determination be modified to reflect that eight-five percent (85%) of the Dance Studio and Offices shall be exempt, the remaining fifteen percent (15%) shall be taxable; one hundred percent (100%) of the Recording Studio shall be exempt, the exemption includes a proportionate amount of land, effective January 1, 2006. The remainder of the staff attorney’s initial determination remains.

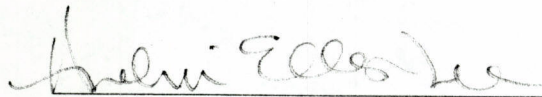
Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **“must be filed within thirty (30) days from the date the initial decision is sent.”** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **“identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order”**; or

2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 15th day of May, 2007.



ANDREI ELLEN LEE
ADMINISTRATIVE JUDGE
TENNESSEE DEPARTMENT OF STATE
ADMINISTRATIVE PROCEDURES DIVISION

cc: Ellen S. Gilbert, Director, Global Education Center
Metropolitan Attorney Margaret O. Darby
John Cantrell, Exemption Administrator, Davidson County Assessor's Office

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¹The first page of the Initial Decision and Order entered on May 15, 2007, will be replaced to reflect the correction.